

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 09/16/03

AGENDA ITEM 4

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Denial of Use Permit No. 2002-0577 to Expand Operation of Drive-Through to 24 Hours - Jack-in-the-Box (Operator), Anthony Poligono – (Owner) - The Property Is Located at 1075 West Tennyson Road

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution finding that the project is categorically exempt from CEQA and approving a 24-hour operation for a one-year period, and approving additional conditions of approval.

DISCUSSION:

The use permit for the Jack-in-the-Box restaurant on West Tennyson Road was approved by the City Council in 1980. The City Council limited the hours of operation from 6 a.m. to midnight Sunday through Thursday and from 6 a.m. to 2 a.m. Friday and Saturday.

Staff was made aware that Jack-in-the-Box was operating its drive-through 24 hours a day; consequently, in December 2001, staff directed the operator to limit the operation to the hours allowed by the use permit. The Jack-in-the-Box is currently maintaining the hours of operation originally approved by Council. The operator subsequently filed an application requesting to operate the drive-through window 24 hours a day, seven days a week, indicating that the expanded hours would provide added service to customers.

On June 26, 2003, with a 4-2 vote, the Planning Commission denied the request to extend the hours of operation. In denying the application, Planning Commissioners noted that there was no compelling reason to extend the hours of operation and the Police Department had concerns about the potential for criminal activity were the hours to be extended.

In acting on the application to modify the use permit, the Planning Commission added conditions of approval. When an application to modify an existing use permit is considered, the reviewing body may add or amend conditions of approval beyond those requested by the applicant to assure that the use continues in maximum harmony with the area and in accordance with official City policies. Accordingly, the Planning Commission added three conditions to the use permit (Exhibit D) requiring (1) employees to daily pick up litter on properties within 300 feet of the perimeter of the site, (2) the site manager to take whatever steps are necessary as determined by the Planning

Director and the Police Chief to assure the orderly conduct of employees, patrons, and visitors on the premises, including hiring security guards, and 3) that signs be posted on the property requesting patrons to reduce the volume of their car stereos. These conditions are intended to address the issues associated with safety issues and reported problems of loitering and late night criminal activity, noise and litter related to the operation and concerns of the neighbors.

At the Planning Commission hearing, a Jack-in-the-Box representative indicated that they had been working with area residents to come to an agreement for maintaining a 24-hour operation. The representative indicated that they would be willing to hire a security guard during late-night hours, close off the rear portion of the parking lot at night, turn down speakers, add additional trash cans, post signs requesting that customers turn down their radios, and plant trees in order to satisfy nearby residents. The manager of the adjacent apartment complex, which has six units located only 15 feet from the rear property line, indicated his support of the extended hours of operation as long as the rear portion of the parking lot was closed and increased security were provided. No other members of the public spoke on the issue, although staff had received comments both for and against the extended hours.

A letter appealing the Planning Commission's denial action (Exhibit C) was filed stating that the Planning Commission disregarded the support of the neighbors and that the staff's recommendation had no evidence to support its claims of crime associated with late night operating hours. Also subsequent to the Planning Commission meeting, the appellant offered a compromise proposal, which would allow the drive-in to operate 24 hours a day for a one-year trial period with the stipulation that the parking lot would be closed during late-night hours and a security guard would be posted between 10 p.m. and 6 a.m.

The data provided below indicate that there were more police service calls during the time when the restaurant was open 24 hours than when the drive-in reduced its hours. Also, many of the late-night calls were of a more violent nature. However, the Jack-in-the-Box drive-in is located in an area associated with high crime; and in recent years, the City has made progress in curbing crime to the extent that there has been a reduction in crime in the area generally. Upon re-evaluation of the data, staff has concluded that the reduction in the calls for service to the drive-in may not be associated solely to the reduction in the hours of operation but to the decrease in crime in the vicinity. Also, the data do not reflect that all violent crime occurred after midnight.

Open 24 hours

Year	Service Calls	Incidents: 11p.m. to 6a.m.
1999	81	29
2000	99	43
2001	91	29


Current Hours

Year	Service Calls	Incidents: 11p.m. to 6a.m.
2002	67	14
2003 (as of 8-31-03)	31	8

In response to a notice of the appeal action, staff received a letter from the owner of the property occupied by Jack-in-the-Box, which indicates his opposition (see Exhibit F). However, it should be noted that the property owner signed the original application authorizing the City to process the application for expansion of the hours of operation to 24 hours a day (Exhibit G). There is a contractual arrangement between Jack-in-the-Box and the property owner; the staff is unaware of the ability of the owner to prevent the 24-hour operation.


After reconsidering the police data and taking into account that additional conditions of approval could reduce undesirable impacts, staff is supportive of a trial period allowing the drive-in to operate on a 24-hour basis for a period of one year as long as additional conditions of approval are imposed. The suggested conditions of approval would require closure of the parking lot after 10 p.m. and a security guard on duty between the hours of 10 p.m. and 6 a.m. (Refer to Exhibit D.)

Prepared by:




Tim R. Koonze
Assistant Planner

Recommended by:



Sylvia Ehrenthal
Director of Community and Economic Development

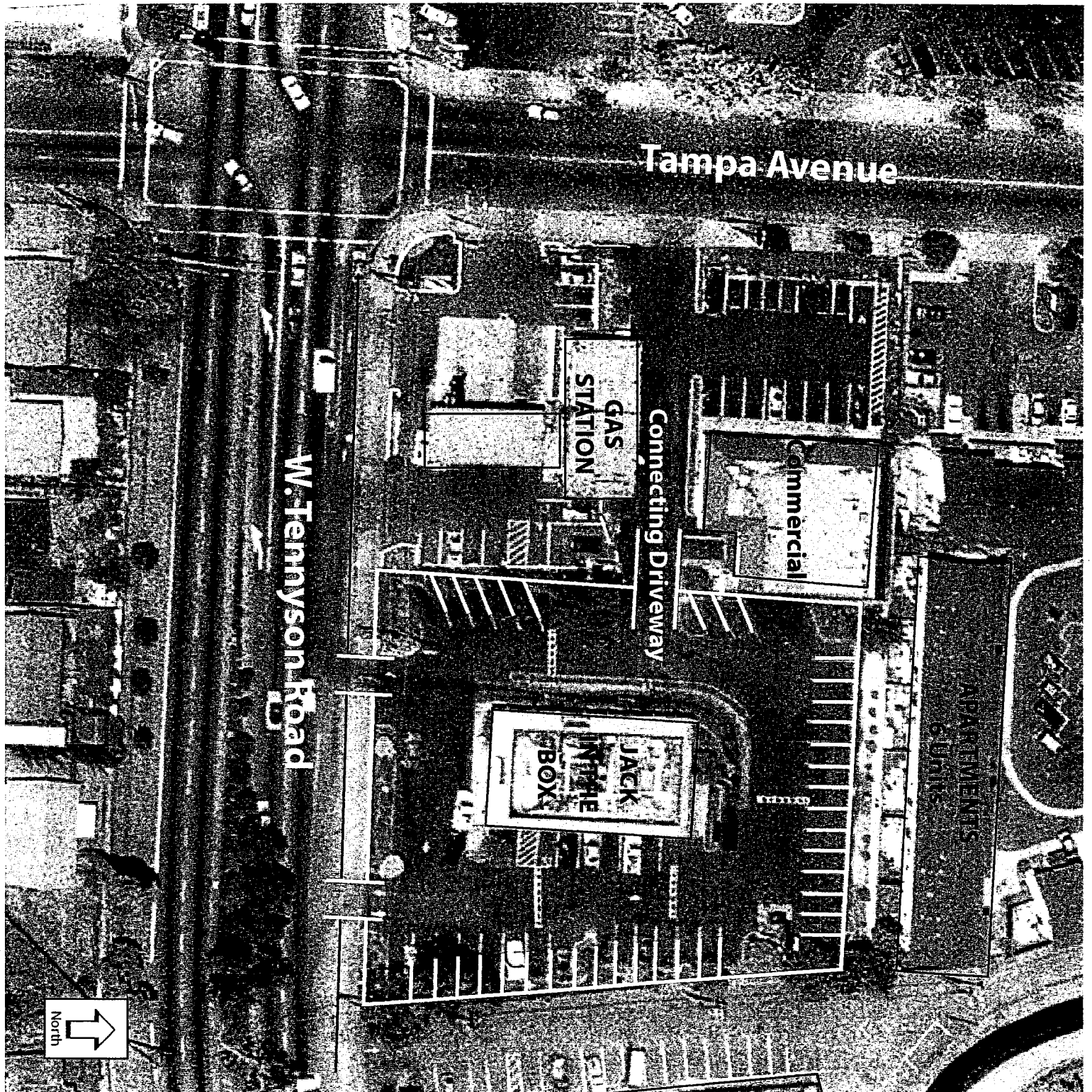
Approved by:



Jesus Armas, City Manager

Attachments:

- Exhibit A - Aerial Photo
- Exhibit B - Appeal Letter, dated June 30, 2003
- Exhibit C - Findings for Denial of 24-hour operation and Findings
for Approval of Additional Conditions of Approval
- Exhibit D - Conditions of Approval
- Exhibit E - Minutes and Planning Commission Report of June 26, 2003
- Exhibit F - Letter of Opposition from Property Owner
- Exhibit G - Application for 24-Hour Operation Signed by Property Owner



CHURCH

FCI

Fanelli Consulting, Inc.

Land Planning / Property Management / Real Estate Broker

RECEIVED

JUL 01 2003

June 30, 2003

PLANNING DIVISION

Mr. Tim Koonze. Assistant Planner
Planning Department
City of Hayward
777 "B" Street
Hayward, CA 94541

RE: PL 2002-9577 UP

Dear Tim:

On behalf of Jack In The Box, we are submitting this letter appealing the decision by the Planning Commission on June 26th to deny the above referenced application.

We are requesting an appeal hearing at the City Council on this matter. Our appeal is based on the Planning Commissions' disregard of the support of the neighbors and community for the application and of the Planning Commissions reliance on a police recommendation which had no verification.

We understand that a hearing date will not be available until September. Please notify us as soon as possible of the date of the hearing.

Thank you for your attention to this matter.

Very truly yours,



Virginia Fanelli
President

Cc: Dyana Anderly, Planning Manager
Earl Fisher, Jack In The Box

**FINDINGS OF DENIAL OF 24-HOUR OPERATION
and
FINDINGS FOR APPROVAL OF ADDITIONAL CONDITIONS OF APPROVAL**

Use Permit No. P1-2002-0577

Jack-in-the-Box

Anthony Poligono (Operator/Applicant)

Foodmaker Inc. (Owner)

June 26, 2003

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
- B. The proposed 24-hour drive-up window is not desirable for the public welfare as it may foster late night loitering and increase the need for police surveillance. The property has a history of crime activity and unacceptable noise during late night hours of operation.
- C. The proposed 24-hour drive-up window will impair the character and integrity of the neighborhood by enticing late night activity to occur which is conducive to criminal activity.
- D. The proposed 24-hour drive-up window will be detrimental to the safety and welfare on the neighborhood by enticing late night activity to occur which is conducive to criminal activity.
- E. The project lies within the Harder-Tennyson Neighborhood Plan which encourages support of the police to help reduce the crime rate and increase the public's safety. The Police Department is recommending against the extended drive-up window hours to keep citizen activity down to a minimum during late night and early morning hours in order to curb undesirable actions.
- F. The proposed conditions of approval requiring the daily collection of litter within 300 feet of the perimeter of the site is consistent with the strategy of the Harder-Tennyson Neighborhood Plan requiring the daily pick-up of litter surrounding fast food restaurants.
- G. The proposed condition of approval assuring the orderly conduct of employees, patrons, and visitors on the premises, is consistent with the policy of the Harder-Tennyson Neighborhood Plan to increase public safety.
- H. The proposed condition of approval requiring the posting of signs requesting patrons to reduce the volume of their car stereos will help assure the public welfare by striving to maintain acceptable living conditions for residents within the apartment units that are adjacent to the restaurant.

CONDITIONS OF APPROVAL

Use Permit No. PI-2002-0577

Jack-in-the-Box

Anthony Poligono (Operator/Applicant)

Foodmaker Inc. (Owner)

Approved by Planning Commission on

June 26, 2003

1. Employees shall daily pick-up the trash originating from the site that is deposited on adjacent properties within 300 feet of the perimeter of the site.
2. The manager shall take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises to the satisfaction of the Planning Director and the Police Chief, which may include the hiring of security guards.
3. Signs shall be posted on the property requesting patrons to reduce the volume of their car stereos.

Recommended Conditions of Approval September 16, 2003

- A. *The restaurant may operate 24-hours a day until October 1, 2004, at which time the hours shall revert to those approved by the City Council in 1980. If during this period, these hours result in an atmosphere supportive of criminal activity as determined by the Police Chief, the hours shall revert back to those approved by the City Council in 1980. The applicant may apply for expanded hours after the initial one-year period, by submitting an application for it, no later than September 15, 2004.*
- B. *The parking area shall be closed to the public by midnight seven days a week. The parking lot closure plan shall be approved by the Planning Director prior to on-set of the 24-hour operation.*
- C. *A security guard shall be posted between the hours of 10 p.m. and 6 a.m. seven days a week.*

MINUTES

REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD

Council Chambers

Thursday, June 26 2003, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

Principal Planner Patenaude agreed that if the other one were removed, they would still need a variance.

Commissioner Sacks moved, seconded by Commissioner Halliday, to deny the variance for the larger 750-foot structure and approve the variance for the smaller 350-foot structure with staff to bring back findings and conditions of approval.

The motion passed 6:1, with Commissioner Zermeño voting "No."

Assistant City Attorney Conneely reminded them that the applicant could appeal the denial of the variance for the 750-foot structure.

3. Use Permit No. PL-2002-0577 – Jack-in-the-Box (Anthony Poligono Operator/ Applicant) – Foodmaker Inc. (Owner) – Request to Amend Use Permit 80-109 to Expand Hours of Drive-Through to 24 Hours Daily – The Property is Located at 1075 Tennyson Road Approximately 150 Feet East of Tampa Avenue

Principal Planner Patenaude presented the report. Commissioner Zermeño recused himself. Principal Planner Patenaude reported that the primary issue is crime in the area and police calls to the area, half of which occur after 10 p.m. Police noted the service calls were more frequent and serious when the restaurant was open later and longer. He said opening late might contribute to more crime. He said the application gave staff the opportunity to look at previously approved conditions. Staff recommended denying the request but modifying the conditions of approval to include daily pick-up of litter by employees. Also require management to assure orderly conduct on the premises, and post signs on the premises asking patrons to reduce the volume of their car stereos. He noted that the correspondence received by the City of Hayward encouraged the commission to deny the request but that two parties had changed their petition to support. He added that with the sparse landscaping along the property line, the Commission might want to consider more trees.

Commissioner Halliday asked whether all three conditions were covered in the original conditions of approval.

Principal Planner Patenaude explained that today's conditions would have more power to be enforced.

Commissioner Halliday then asked whether the conditions could still be added whether or not the application is approved.

Principal Planner Patenaude said, yes, that's the recommendation.

The public hearing opened at 11:15 p.m.

Virginia Fanelli, speaking for the applicant, asked for approval of opening the drive-through for 24-hour service. She noted the letters of objection and what the restaurant owner had done to work with the neighbors. She explained that they had met with Tom Silva, apartment owner next door, as well as a neighborhood group. As a result, they have already made changes which include turning the speaker unit volume to the lowest decibels, additional trash receptacles, more trash pick ups during the working hours, closed the back lot, hired a security guard who will work from 7 p.m. to 3 a.m., and agreed to plant trees. She said they have also participated in school activities with coupons. As a result of these actions, all the neighbors have withdrawn their objections. She said the restaurant also circulated petitions to patrons asking for 24-hour operation. She stated that the late hours brought in \$400,000 a year. She noted that staff is basing the denial on police recommendations. She called the Police Department to get further information and Lt. Lowe said no recommendation had been made by the Police Department. She then asked for approval with further conditions noting that the Commission can always bring the request back for review. This is a corporate operated restaurant.

Commissioner Sacks commented that these were conditions at the time of the original permit.

Ms. Fanelli responded that the most significant changes are hiring security and closing the back parking lot.

Commissioner Sacks stated that this is a highly drug-induced neighborhood, and asked how they deal with that.

Ms. Fanelli said they are working to try to find avenues, but obviously do not have all the answers. She suggested that, hopefully, by having activity in the area 24 hours, it might help.

Commissioner Halliday asked what the rationale was for not keeping the restaurant open, just the drive-through.

Ms. Fanelli responded that it is easier to watch the window and what is going on as well as being safer for the employees to close the restaurant.

Commissioner Halliday then asked staff whether the City of Hayward has regulations for drive-ins to be open 24-hours a day.

Planning Manager Anderly said they have standard operations for drive-ins. Each application is looked at on a case-by-case basis. For example, the McDonalds near Denny's is not near a residential area. They have approved a Jack-in-the-Box in a different neighborhood. She noted that this applicant seems very well intentioned, but managers change and it is difficult to enforce conditions because of the type of operation.

Commissioner Thnay asked about the schedule of the security guard from 7 p.m. to 3 a.m. and what happens between 3 a.m. and 7 a.m. He then asked whether the corporation would be willing to donate to after school program,

Ms. Fanelli explained that the hours were deemed to be the hours of the most crime in the

MINUTES



REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD Council Chambers Thursday, June 26 2003, 7:30 P.M. 777 "B" Street, Hayward, CA 94541

area. She added that they have offered to work with the after school programs but the Harder-Tennyson group is not too organized.

Assistant City Attorney Conneely suggested that if members agreed to grant the application, they could put a sunset on the provision.

Tom Silva, owner of the apartment house next door, explained that events have caused a positive change in the area. He said he has been a landlord since 1980 and the past six-months there have been a great deal of changes. He said the situation is different from a year ago. The applicant has responded and become neighbors in the community, as well as making significant improvements in the area. He said with the closing the back area as well as increased security, he would support the 24-hour application. He added that he welcomed their participation.

Commissioner Halliday asked how the parking lot is closed off.

Mr. Silva explained that they store barricades in the back and at a certain time, all the back is blocked off.

The public hearing closed at 11:37 p.m.

Commissioner Bogue said he spent time at the restaurant between 11:30 p.m. and 1 a.m. He noticed that the volume was turned down on the speakers, and commented that he counted 45 cars an hour going through the drive-through. He explained that he was concerned about the drive through because of the lack of directional signs and path of travel from the Tampa driveway but suggested this might be easily taken care of.

Commissioner Thnay moved, seconded by Commissioner Sacks, to grant approval of the application for a 6-month trial period, to include both the applicant's conditions as well as those asked for by staff. He added that he would like to see them contribute about 5-10 percent of future revenues for after-school programs.

Assistant City Attorney Conneely asked whether the motion would include an expiration date 6-months from the date of this request, noting also that to require a contribution might be illegal.

Commissioner Thnay then qualified his motion to say, "encourage" the applicant to contribute to an after-school program.

Commissioner Caveglia then made a substitute motion, seconded by Commissioner Halliday, to approve staff recommendation and deny the appeal.

Commissioner Halliday added that she did appreciate what the owner has done to work with the community. She said she did not see the need for this to become a 24-hour operation

terming it not necessary.

Commissioner Caveglia stated that the police have been clear on their position.

The motion carried by the following vote:

AYES:	COMMISSIONERS Halliday, Caveglia, McKillop
	CHAIRPERSON Bogue
NOES:	COMMISSIONER Thnay, Sacks,
ABSENT:	None
ABSTAIN:	COMMISSIONER Zermeno

ADDITIONAL MATTERS

4. Oral Report on Planning and Zoning Matters

Planning Manager Anderly reminded members that at the next meeting they would be electing new officers.

5. Commissioners' Announcements, Referrals

Chairperson Bogue asked for support for a Planning Commission resolution to honor Commissioner Caveglia who was termed out of his position. The vote was unanimous. Chairperson Bogue then thanked Commissioner Caveglia for his hard work as a member of the Commission and read the resolution of commendation.

ADJOURNMENT

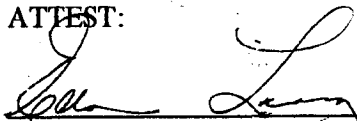
Chairperson Bogue adjourned the meeting at 11:48 p.m.

APPROVED:



Barbara Sacks, Secretary
Planning Commission

ATTEST:



Edith Looney
Commission Secretary



CITY OF HAYWARD

AGENDA REPORT

Meeting Date 6/26/03

Agenda Item 3

TO: Planning Commission

FROM: Tim R. Koonze, Assistant Planner

SUBJECT: Use Permit No. PL-2002-0577 – Jack-in-the-Box (Anthony Poligono Operator/Applicant) – Foodmaker Inc. (Owner) - Request to Amend Use Permit 80-109 to Expand Hours of Drive-Through to 24 Hours/Daily

The Property Is Located at 1075 Tennyson Road Approximately 150 feet East of Tampa Avenue Within a CN (Neighborhood Commercial) District

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Minor Alteration in Land Use Limitations; and
2. Deny the request to extend hours of operation and modify use permit by adding conditions of approval.

DISCUSSION:

The Planning Commission approved the Jack-in-the-Box restaurant on Tennyson Road in 1980. An appeal was filed and the application was forwarded to City Council who upheld the Planning Commission's approval. The use permit limits the hours of operation from 6 a.m. to 12 midnight Sunday through Thursday and 6 a.m. to 2 a.m. Friday and Saturday.

It came to staff's attention that Jack-in-the-Box was operating 24 hours a day, and they were asked to limit hours of operation to those allowed by the use permit. Jack-in-the-Box complied and is now maintaining the hours of operation originally approved by Council. The applicant subsequently filed an application requesting to operate the drive-through window 24-hours a day, seven days a week. The applicant states that staying open on a 24-hour basis will provide added service to customers.

Multi-family and commercial uses surround the property. Six multifamily units are located approximately 15-feet from the northerly property line, a gas station and a small multi-tenant commercial building are located to the west of the property and Glad Tidings Church abuts the easterly property line.

Over time, the Police Department has consistently received service calls to this Jack-in-the-Box establishment. Incidents ranged in seriousness from minor disturbances to drug activity to battery. Almost half of these called occurred after 10:00 p.m. Even though the restaurant is currently closed after midnight during the week and after 2:00 a.m. on weekends, since March 1, 2003 a security guard has been on the site from midnight. to 6:00 a.m. and police calls to this site have maintained an average of three calls a month with the same percentage of calls occurring in the late evening and early morning hours. Although three calls a month is not unusually high, during the time the restaurant was open 24-hours a day the Police Department stated that the service calls were more frequent and of a more serious and violent nature.

The Harder-Tennyson Neighborhood Plan encourages support of the police to help reduce the crime rate and increase public safety. In recent years the City has devoted significant resources to reduce crime in this area. The Police Department recommends against extending the drive-up window hours in order to keep undesirable activity to a minimum during late night and early morning hours. Given the concerns of the Police Department, allowing the drive-up window of the restaurant to operate on a 24-hour basis would not be consistent with the neighborhood plan.

The conditions of approval that were approved in 1980 area attached. With this application to modify an existing use permit, conditions of approval may be added or amended as necessary to assure that the use occurs in maximum harmony with the area and in accordance with official City policies. Although staff recommends that the request to operate 24 hours a day be denied, it is recommended that conditions of approval be added that (1) require employees to daily pick up litter originating from the site that is deposited on adjacent properties within 300 feet of the perimeter of the site, (2) require the site manager to take whatever steps are necessary to assure the orderly conduct of employees, patrons, and visitors on the premises, including hiring security guards if necessary, and 3) require that signs be posted on the property requesting patrons to reduce the volume of their car stereos. These conditions are intended to address the issues associated with the high number of police calls and reported problems of loitering and late night criminal activity, noise and litter related to the operation.

PUBLIC NOTICE:

On October 28, 2003, a notice describing the request to operate the drive-up window on a 24-hour basis was mailed to all property owners and tenants within 300 feet of the subject property and to all interested parties. Negative responses were received from the owner of the Tennyson Shopping Center (located across the street to the east) the owner and manager of Tampa Square multi-family residential complex (adjacent to the rear of the property) and a resident who resides at 27746 Tampa Avenue on the south side of Tennyson Road.

The comments noted that the drive-thru speaker was too loud, that Jack-in-the-Box patrons play their car stereos too loudly and that there is excessive litter in the neighborhood coming from the fast food establishment. There was a common concern that longer operating hours will encourage late-night loitering and contribute to an already substantial drug-dealing problem that exist in the area.

Upon receiving these comments, the applicant began working with the neighborhood and agreed to:

1. Reduce the volume of the drive-thru speaker;
2. Post signs requesting patrons to reduce the volume of their car stereos;
3. Close the rear parking area from dusk to dawn.
4. Hire an armed security guard to patrol the premises from 6:00 p.m. to 3:00 a.m.; and
5. Continue efforts to remove Jack-in-the-Box litter from the surrounding streets on a daily basis.

In a letter dated April 4, 2003, the owner and manager for the Tampa Square Complex located next door to the Jack-in-the-Box informed the City that these improvements have addressed their concerns and they no longer object to the 24-hour operation of the drive-thru window as long as these requirements are made conditions of approval and the applicant adheres to them. The two other parties that expressed concerns would like to continue the restriction on Jack-in-the-Box's operating hours.

On April 25, 2003, a Notice of Public Hearing for the Planning Commission meeting was mailed.

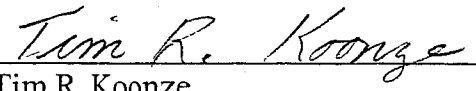
ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5, Minor Alterations of Land Use Limitations.


CONCLUSION:

The applicant has worked with the adjacent property owners and has proposed various improvements to alleviate their concerns of the restaurant drive-up window operating on a 24-hour basis. Although the applicant has managed to appease some of the neighbors, the Police Department continues to object to extending the drive-up window hours in this area of Hayward known to have suffered from problems related to crime.

Prepared by:

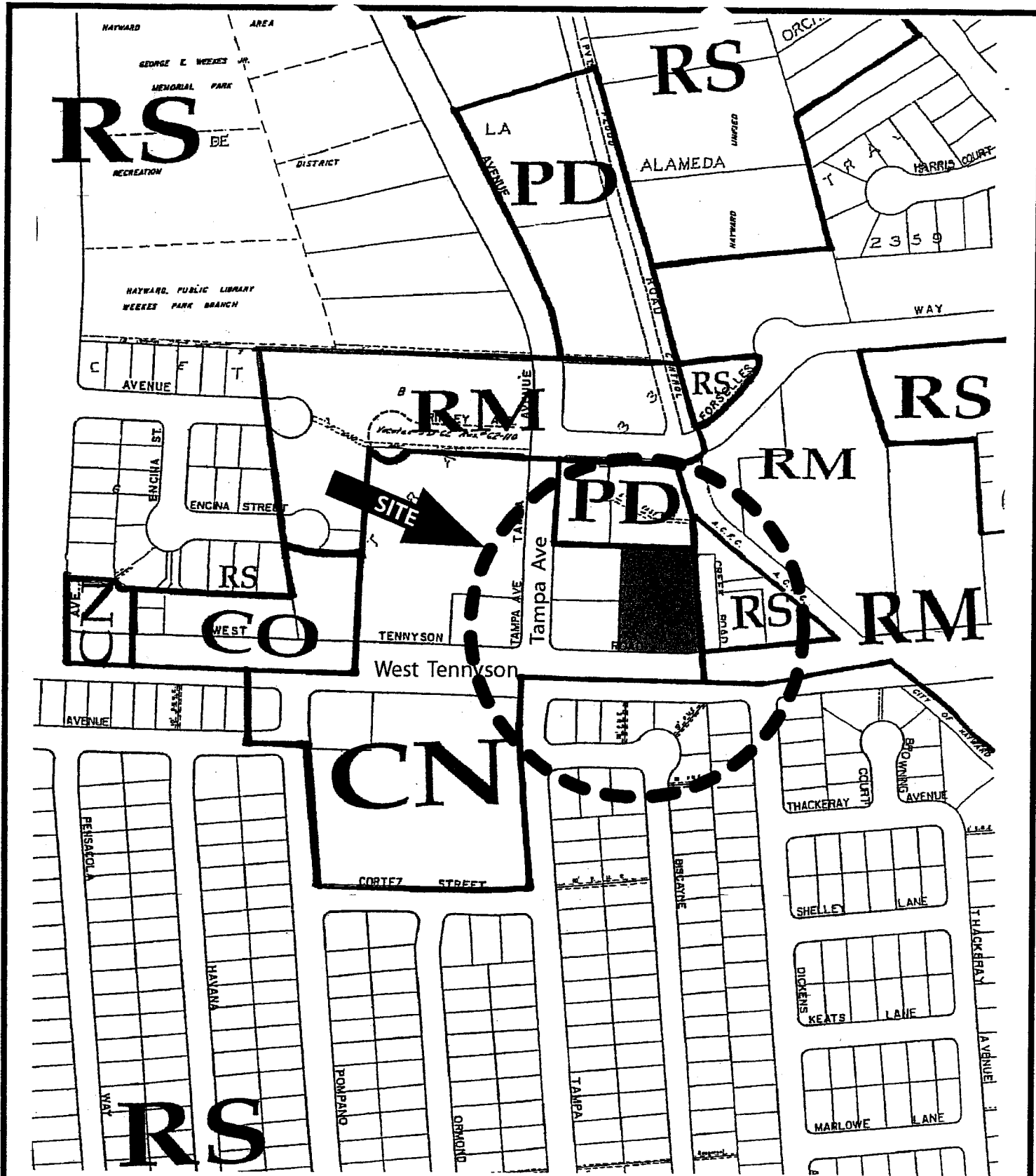

Tim R. Koonze
Assistant Planner

Recommended by:


Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Aerial Photo
- C. Email expressing concern dated November 1, 2002
- D. Letter expressing concern dated November 5, 2002
- E. Letter expressing concern dated November 8, 2002
- F. Letter of support dated May 23, 2003
- G. Letter of support dated May 27, 2003
- H. Applicants letter dated June 16, 2003
- I. Conditions of Approval, 1980
- J. Findings for Denial of 24-hour operation and Findings
for Approval of additional conditions of approval
- K. Conditions of Approval



Area & Zoning Map

PL-2002-0577 UP

Address: 1043 W. Tennyson Road

Applicant: Virginia Fanelli

Owner: Anthony Poligono

CN-Neighborhood Commercial

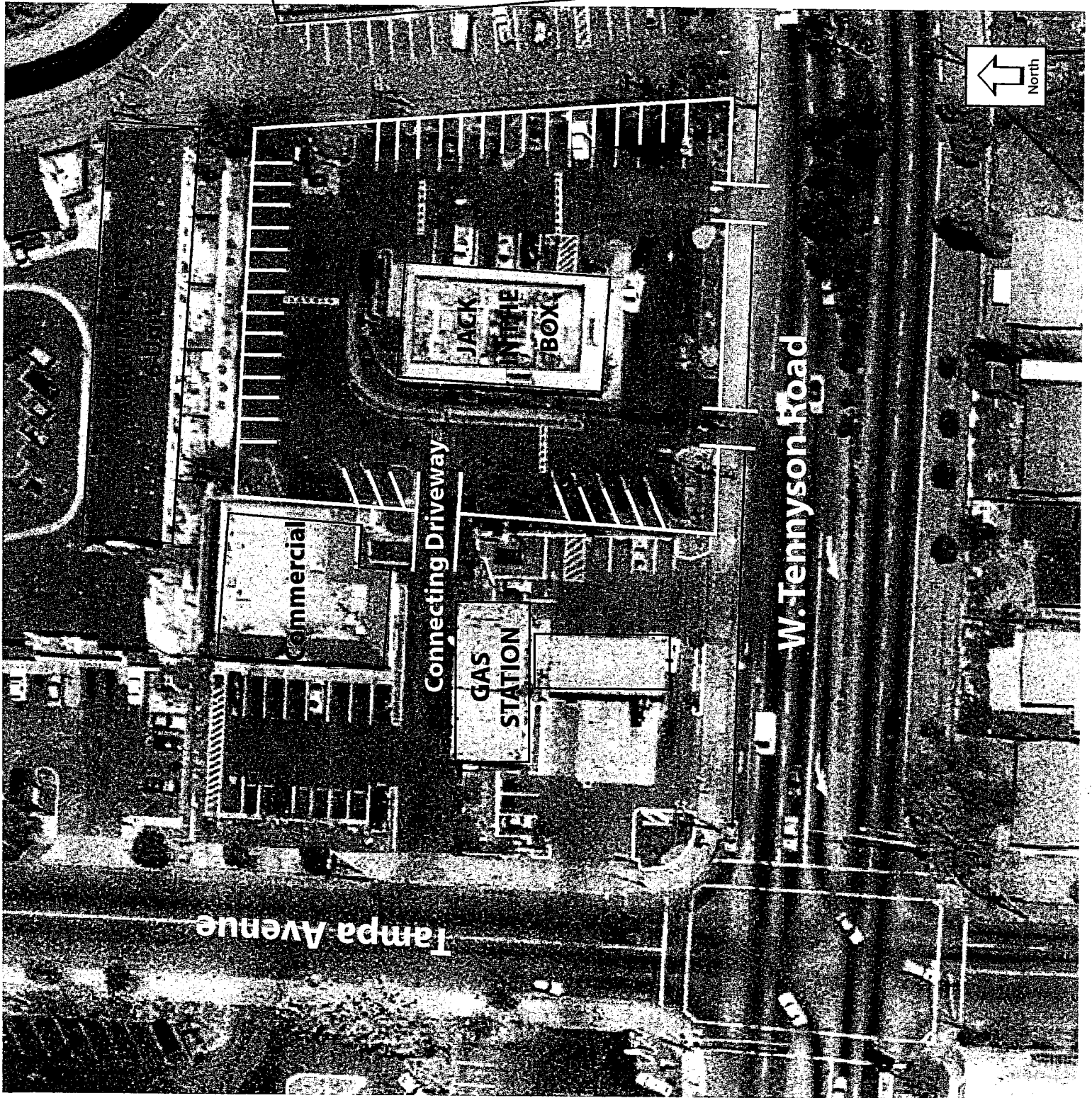
CO-Commercial Office

PD-Planned Development

RM-Medium Density Residential RMB 3.5, RMB 4

RS-Single-Family Residential,RSB4,RSB6

CHURCH



Tim Koonze

From: Ilene Weinreb
Sent: Friday, November 01, 2002 9:47 AM
To: Tim Koonze
Subject: Proposed Jac-in-the-Box proposed operating hours

Dear Mr. Kooze:

I am the owner of the residential/commercial complex at the corner of Tampa and Forselles, quite close to the Jack-in-the Box in question.

I oppose extending the operating hours of the Jack-in-the-Box at 1075 W. Tennyson Road. The hours are very generous at present. I would like my tenants not to have to put up with the noise that longer hours would entail.

Furthermore and very important, we have had much drug traffic in the area. An establishment that is open all night long would only exacerbate the problem.

Please insert in the record my strong opposition to extending the operating hours at all.

Yours truly,

Ilene Weinreb

EDEN REALTY

P. O. Box 126
San Lorenzo, CA 94580
(510) 537-8181
Fax: (510) 537-8338

RECEIVED

NOV 6 2002

PLANNING DIVISION

November 5, 2002

Tim R. Koonze, Assistant Planner
Planning Department
City of Hayward
777 B St.,
Hayward, CA 94541

Re: PL-2002-0577 UP
Jack in the Box – Increase in Operating Hours

Dear Mr. Koonze:

I am the Property Manager for the Tampa Square Complex at the corner of Tampa and Forselles in Hayward. Our Apartments #7 through #12 (six total) abut the drive-through area, with two of the apartments' bedroom windows directly opening onto Jack in the Box's drive-through area..

Our residents constantly complain about the noise that comes from the drive-through activities. These excessive disturbances include, but are not limited to –

- 1) A very loud, loud speaker that the store's staff uses to communicate with the patrons.
- 2) The very loud stereos of the cars that are in the drive-through especially the cars with loud bass beats. (Have you ever tried to sleep when your bedroom windows are vibrating due to a car stereo 50 feet away from you?)
- 3) The excessive litter that the patrons of the drive-through produce in the neighborhood when they are done with their meal and throw the garbage on the street.

Tim R. Koonze, Assistant Planner
Planning Department
City of Hayward
Re: PL-2002-0577 UP

Jack in the Box – Increase in Operating Hours
November 5, 2002
Page Two

We are also very concerned that 24-hour service will result in the parking lot becoming a hangout for the undesirable element in the neighborhood and contribute to the already substantial problem of street drug dealing that the community already faces in the area.

We would prefer that the drive-through be closed down completely. However, we understand that this will not happen.

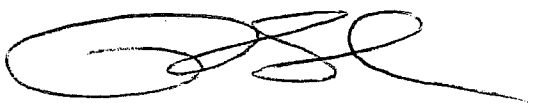
However, please do not permit this nuisance to expand by permitting 24-hour service.

Thank you on behalf of the residents of Apartments #7, 8, 9, 10, 11 and 12. They appreciate the opportunity for their concerns to be heard.

Please contact us if you have any further questions or concerns.

Respectfully yours,

EDEN REALTY

A handwritten signature in black ink, appearing to read 'T. Silva', with a large, stylized loop at the beginning.

Thomas R. Silva CPM

cc: File

Faye Clark

Residents of Apts. #7, 8, 9, 10 11 and 12 – 1050 Forselles Way, Hayward



November 8, 2002

Mr. Tim R. Koonze
Assistant Planner Planning Division
777 "B" Street
Hayward, CA 94541

VIA: FAX 510-583-3649

RE: PL-2002-0577 UP
Jack-in-the-Box, 1075 W. Tennyson Road, Hayward, CA
REQUEST for 24-Hour Drive-Thru

Dear Mr. Koonze:

On behalf of the owners and tenants of the Tennyson Shopping Center located at 1100 - 1196 West Tennyson Road in Hayward, California, I strongly urge the Planning Commission to reject Jack-in-the-Box's request to extend their hours of operation to a 24-hour drive-thru window.

We have a security guard on duty seven days a week between the hours of 3:00 pm - 11:00 pm to assist our patrons and tenants with problems associated with loitering, vandalism, graffiti and illegal dumping of garbage. Several tenants have had their windows broken. As recently as last week, our Round Table Pizza tenant had their windows broken by a group of young people.

We continue to be overwhelmed with garbage some of which blows in the wind from Jack-in-the-Box to Tampa Avenue. I am constantly receiving telephone calls from the residents on Tampa Avenue and Notices to Abate from the City of Hayward regarding accumulated garbage on Tampa Avenue eventhough the center is serviced by a sweeping company seven nights a week.

Our neighborhood will be negatively impacted by a 24-hour drive-thru restaurant in that it will increase the volume of criminal activity, loitering, vandalism, graffiti and garbage around the Tennyson Shopping Center.

I respectfully request this matter be set up for a public hearing before the Planning Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia Lee Hertz".

CYNTHIA LEE HERTZ
Property Manager Tennyson Center
510-531-0820

MARTIN HERTZ ASSOCIATES

Commercial Investment Real Estate

P.O. Box 13158, Oakland, California 94661 (510) 531-0820

FAX: (510) 531-0838

EDEN REALTY

P. O. Box 126
San Lorenzo, CA 94580
(510) 537-8181
Fax: (510) 537-8338

RECEIVED

MAY 28 2003

PLANNING DIVISION

May 23, 2003

Tim R. Koonze, Assistant Planner
Planning Department
City of Hayward
777 B St.,
Hayward, CA 94541

Re: PL-2002-0577 UP
Jack in the Box – Increase in Operating Hours
Planning Commission Hearing, June 26, 2003

Dear Mr. Koonze:

I am the Property Manager for the Tampa Square Complex at the corner of Tampa and Forselles in Hayward. Our Apartments #7 through #12 (six total) abut the drive-through area, with the apartments' bedroom windows directly opening onto Jack in the Box's drive-through area.

On November 5th, 2002, I wrote you expressing our concerns in regards to this Application. Since then, we have had extensive discussions with the store manager, Mr. William Wong, and the Applicant, Ms. Virginia Fanelli, and we have developed a plan to address these concerns.

- 1) That they have turned down the volume on the drive-through speaker to a level that is not readily heard inside apartments 7 through 12.
- 2) That they have posted signs on the property to ask patrons to turn down their car stereos and to keep the volume down while they are on the premises.
- 3) That from 6:00 p.m. to 6:00 a.m., they have closed off the rear parking area next to apartments 7 through 12, so that no one parks there in the evening hours to eat their meals.
- 4) That they will have an unarmed guard on the premises from 6:00 p.m. to 3:00 a.m., seven days per week to enforce the above conditions when the drive-through is in operation during those hours.

ATTACHMENT F

Tim R. Koonze, Assistant Planner
Planning Department
City of Hayward
Re: PL-2002-0577 UP

Jack in the Box – Increase in Operating Hours
May 23, 2003
Page Two

- 5) That they will continue their efforts to remove Jack in the Box litter from the surrounding streets on a daily basis.

These efforts have been in place on a trial basis since March 1, 2003, and have satisfactorily addressed most of our concerns. The only remaining item is a visual screening of apartments 7 through 12 from the store area. We request an additional condition requiring that the Applicant plant and maintain appropriate trees in the Planting Area to provide a natural cover from the parking area for these apartments

We have spoken with the Applicant and they have agreed in principal to our request.

I have surveyed our residents and they have not voiced any objections with the above conditions. I have also spoken to Mrs. Weinreb, the owner of the property, and it is my understanding that she contact you directly to confirm that she will not object to the 24-hour drive-through operations, so long as all of the above conditions are followed at all times.

The above conditions satisfy all of our concerns as well.

In addition, we appreciate the good faith efforts of Ms. Fanelli and Mr. Wong, to develop effective solutions to our issues.

Thank you for the opportunity to present our concerns to you. Please contact us if you have any questions or concerns.

Respectfully yours,

EDEN REALTY

A handwritten signature in black ink, appearing to be 'Thomas R. Silva', written over the printed name.

Thomas R. Silva CPM

cc: Ms. Weinreb
Ms. Fanelli
Ms. Clark and residents of Apts. 7-12

Ilene Weinreb
65 Hiller Drive
Oakland, CA 94618

Phone: 510-540-5666
fax: 510-540-7321
email: weinreb@telis.org

RECEIVED

May 27, 2003

MAY 30 2003

Tim R. Koonze, Assistant Planner
Planning Department
City of Hayward

PLANNING DIVISION

Re: PL-2002-0577 UP -- Jack in the Box-- Increase in Operating Hours

Dear Mr. Koonze:

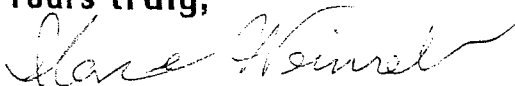
I am the Property Owner of the Tampa Square Complex at the corner of Tampa and Forselles in Hayward. My apartments #7 through #12 abut the drive-through area of the Jack in the Box.

My property manager, Tom Silva, wrote you about our concerns in regard to this application. Since then he has had extensive discussions with the store manager, Mr. William Wong, and the applicant, Ms. Virginia Fanelli, and developed a plan to address our concerns. There were five concerns (see Tom Silva's letter of May 23, 2003). They have addressed these concerns (except for the planting of trees which they say they will do in the immediate future) on a trial basis. This trial has been satisfactory and I do not object to them operating on a 24 hour basis as long as all of the conditions are followed at all times.

If this does not happen, I would expect the permit to immediately be withdrawn. I trust the operation will continue in a satisfactory manner.

I appreciate the good faith efforts of Ms. Fanelli and Mr. Wong to develop effective solutions to our issues.

Yours truly,



Ilene Weinreb, Owner



Fanelli Consulting, Inc.

Land Planning / Property Management / Real Estate Broker

RECEIVED

JUN 17 2003

June 16, 2003

PLANNING DIVISION

Planning Commission
City of Hayward
777 B Street
Hayward, CA 94541

RE: PL-2002-0577 UP

Dear Planning Commissioners:

On behalf of Jack In The Box, we are writing this letter regarding our application for 24-hour operation of the Jack In The Box restaurant located at 1075 W. Tennyson Road.

We are aware that businesses that operate 24 hours a day are usually discouraged by Planning Departments in the belief that the extended hours can be a source of problems for the neighbors and the community. We are also aware that many businesses are very successful with 24-hour operations because they work closely with the neighbors and community to address their particular concerns and issues.

On October 17, 2002, we made an application with the City of Hayward to extend the hours of the drive thru portion of the restaurant to 24 hours. The Planning Department notified the neighbors of our application and 3 letters opposing the application were received by the city. We then requested that our hearing on this application be postponed to allow us to meet with and work with the neighbors.

The past several months we have met with neighbors and we have participated in the local community group that is working with the police department on neighborhood issues in order that we may fully understand how we can help improve some of the problem situations.

As a result of these meetings we have done the following:

- Hired security to patrol the site from 7:00 P.M. to 1 hour after closing. With approval for 24-hour operation, the hours will be from 7:00 P.M. to 3:00 P.M. which are the hours when the neighborhood experiences the most problems.
- Closed off the rear parking area after dusk to prevent juveniles gathering near the apartments.

- Reduced the sound from speaker board.
- Posted signs requesting all loud radios be turned off while on site.
- Instituted a twice a day trash pick-up along our street frontage and that of our immediate neighbors, extending to cover part of Tampa.
- Installed additional receptacles for trash along the drive thru and around the building,
- Donated award coupons to the local school which may be used for special events.
- Donated paper products for school activities.

We are very pleased that the neighbors who at first objected to our application have favorably received these efforts, on the part of Jack In The Box. You have letters from some of them in your packet stating they now support our application. We know that our restaurant is important to the community, as we have obtained many signatures from people who would like us to have a 24-hour operation so we can better serve those who work late or swing shifts. These will be submitted to you at your meeting.

We realize that our efforts will not completely remove all problems on site or in the area. However, we believe that these efforts on our part will continue to be well received by the neighborhood.

We are asking for your approval for a 24-hour drive thru operation. Jack In The Box operates this restaurant site and the corporation is firmly committed to making the restaurant a positive part of your community.

Very truly yours,



Virginia Fanelli
President

Cc: Tim Koonze, Assistant Planner
Dyana Anderly, Planning Director
Angelina Reyes, City Clerk
Earl Fisher, Jack In The Box

Conditions of Approval
UP 80-105
Jack-in the-Box
1075 West Tennyson Road

1. All improvements indicated on the approved site and landscape plan, as amended by staff and labeled Exhibit "A", must be installed prior to authorization for gas or electric meter service.
2. After initial installation, all plantings must be maintained, including replacement where necessary.
3. Within all new landscape areas, a complete automatic sprinkler system with an automatic on/off mechanism shall be installed.
4. Where any landscaped area adjoins driveways and/or parking areas, Class "B" Portland Cement concrete curbs shall be constructed to a height of six (6) inches above the finished pavement.
5. Each parking space shall be provided with a Class "B" Portland Cement concrete bumper block or continuous concrete curb not less than six (6) inches above the finished pavement.
6. The premises shall be kept clean, and the operator shall endeavor to see that no trash or litter originating from the use is deposited on neighboring properties.
7. No obnoxious odors shall be generated on the site.
8. Noise levels measured at the property line shall not exceed the level of background noise normally found in the area. If a noise problem develops in the speaker box or from customer traffic on the site which cannot be resolved by mitigation measures, the matter will be referred to the Board of Adjustments for review with the possibility of removing the exterior speaker box or taking other mitigation measures deemed appropriate by the Board at that time.
9. Management of the use shall take necessary steps to assure the orderly conduct of employees, patrons, and visitors on the premises.
10. A copy of these performance standards and all use permit conditions of approval shall be posted alongside the necessary business licenses and be visible at all times to employees of the establishment.
11. Outside utility meters, when not enclosed in a cabinet, shall be screened allowing sufficient distance for reader access.
12. The developer shall contact the Fire Prevention Bureau for the location of standpipe systems, first aid fire appliances, and/or Fire Department connections.
13. Open storage is prohibited in paved parking area.
14. A minimum of six concrete trash receptacles shall be provided on the site including two (2) receptacles on the abutting church property, and the design and location shall be approved by the Planning Director.

15. During construction of the drive-in, a minimum of ten (10) parking spaces shall be available for patrons.
16. Mechanical equipment such as air conditioners shall be prohibited on the roof, unless screening and installation is approved, as approved by the Planning Director.
17. Prior to issuance of any sign permit, the Planning Director shall review the proposed signs to insure the sign size is in proportion to the building and located attractively either on the building or on a freestanding structure.
18. Violation of conditions is cause for revocation of permit after public hearing before the duly authorized review body.
19. Any lights provided to illuminate the development/paved parking area shall be arranged so as to reflect the light away from the abutting residential uses.
20. The hours of operation shall be 6:00 a.m. to 12 midnight, Sunday through Thursday and 6:00 a.m. to 2:00 a.m., Friday and Saturday.
21. A Right Turn Only sign shall be installed at ingress from Tampa entering the site.
22. Driveway easement from Tampa to the site to be landscaped to delineate as a driveway.
23. Prior to issuance of a building permit, a site grading and drainage plan, prepared by the owner, shall be approved by the City Engineer.
24. Prior to issuance of a building permit, a revised landscape plan and complete irrigation plan shall be submitted for review and approval by the Parks Superintendent.
25. Prior to issuance of a building permit, the lot line adjustment application shall be approved on the three parcels or combined into one recorded parcel.
26. Prior to connection of utilities, the irrigation system shall be installed.

**FINDINGS OF DENIAL OF 24-HOUR OPERATION
and
FINDINGS FOR APPROVAL OF ADDITIONAL CONDITIONS OF APPROVAL**

Use Permit No. PI-2002-0577
Jack-in-the-Box
Anthony Poligono (Operator/Applicant)
Foodmaker Inc. (Owner)
June 26, 2003

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
- B. The proposed 24-hour drive-up window is not desirable for the public welfare as it may foster late night loitering and increase the need for police surveillance. The property has a history of crime activity and unacceptable noise during late night hours of operation.
- C. The proposed 24-hour drive-up window will impair the character and integrity of the neighborhood by enticing late night activity to occur which is conducive to criminal activity.
- D. The proposed 24-hour drive-up window will be detrimental to the safety and welfare on the neighborhood by enticing late night activity to occur which is conducive to criminal activity.
- E. The project lies within the Harder-Tennyson Neighborhood Plan which encourages support of the police to help reduce the crime rate and increase the public safety. The Police Department is recommending against the extended drive-up window hours to keep citizen activity down to a minimum during late night and early morning hours in order to curb undesirable actions.
- F. The proposed conditions of approval requiring the daily collection of litter within 300 feet of the perimeter of the site is consistent with the strategy of the Harder-Tennyson Neighborhood Plan requiring the daily pick-up of litter surrounding fast food restaurants.
- G. The proposed condition of approval assuring the orderly conduct of employees, patrons, and visitors on the premises, is consistent with the policy of the Harder-Tennyson Neighborhood Plan to increase public safety.
- H. The proposed condition of approval requiring the posting of signs requesting patrons to reduce the volume of their car stereos will help assure the public welfare by striving to maintain acceptable living conditions for residents within the apartment units that are adjacent to the restaurant.

CONDITIONS OF APPROVAL

Use Permit No. P1-2002-0577

Jack-in-the-Box

Anthony Poligono (Operator/Applicant)

Foodmaker Inc. (Owner)

June 26, 2003

1. Employees shall daily pick-up the trash originating from the site that is deposited on adjacent properties within 300 feet of the perimeter of the site.
2. The manager shall take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises, including hiring security guards if necessary.
3. Signs shall be posted on the property requesting patrons to reduce the volume of their car stereos.

TONY POLIGONO PROPERTY MANAGEMENT

P. O. Box 771 • CORTE MADERA, CA 94976
PHONE/FAX (415) 924-7666

September 8, 2003

City of Hayward
777 B Street
Hayward, CA 94541-5007

RECEIVED

SEP 10 2003

Re: Appeal of Use Permit No. PL-2002-0577

PLANNING DIVISION

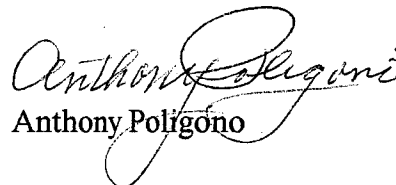
Attn: Tim R. Koonze, Assistant Planner

Dear Mr. Koonze:

I am in receipt of the Notice of Public Hearing for the above appeal. I wish to point out that I am not the Operator/Appellant in this matter, but I am the property owner. Foodmaker, Inc., which runs Jack-in-the-Box, is the Lessee of the property and operates the restaurant site. Foodmaker, Inc. is the party on this use permit application, and I am not a party thereof.

I spoke by telephone to someone in the Planning Department a few days ago regarding this application, and I wish to reiterate that as the property owner, I am opposed to the store operating 24 hours per day, as I believe it creates undue opportunity for activities that attract nuisances, and I believe that if the property attracted nuisances, the value of the property and the neighborhood in general would go down. Furthermore, I believe the taxpayers' money could be spent more wisely than on having to police the area after hours.

Yours truly,


Anthony Poligono



CITY OF HAYWARD

DEVELOPMENT REVIEW SERVICES DIVISION

777 B STREET
HAYWARD, CA 94541-5007
(510) 583-4200 ♦ TDD (510) 247-3340
FAX (510) 583-3649

EXHIBIT G

APPLICATION FOR A DEVELOPMENT PERMIT

APPLICANT (S) JACK IN THE BOX
LAST NAME FIRST NAME

CONTACT PERSON VIRGINIA FANELLI

COMPANY NAME (IF APPLICABLE) FANELLI CONSULTING, INC

STREET 5958 DRY OAK DRIVE

CITY SAN JOSE STATE CA ZIP CODE 95120 PHONE 408-997-9346

FAX NO: 408-997-9347 E-mail: vfanelli@earthlink.net

PROJECT ADDRESS/LOCATION 1075 W. TENNYSON RD CENSUS TRACT NO. _____
HAYWARD CA 94544

PROPERTY OWNER(S) ANTHONY POLIGONO

ADDRESS 565 VIA CASITAS #24 GREENBREA, CA ZIP CODE 94904 PHONE 415-924-7661

ASSESSOR'S MAP 453 BLOCK 0075 PARCEL (S) 008-08 ZONING DISTRICT CN

APPLICANT'S INTEREST IN PROPERTY: OWNER ☐ LESSEE ☒ OPTIONEE ☐ OTHER _____

TYPE PERMIT: SITE PLAN REVIEW ☐ TRACT MAP ☐ VARIANCE ☐

PARCEL MAP ☐ USE PERMIT ☒ ZONE CHANGE FROM _____ TO _____ DISTRICT

IN ORDER TO EXTEND OPERATING HOURS OF DRIVE THRU TO
24 HOURS EACH DAY

I HEREBY STATE THAT THE FOREGOING STATEMENTS AND ANSWERS AND ALL DATA, INFORMATION AND EVIDENCE SUBMITTED HERewith ARE IN ALL RESPECTS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE AND CORRECT.

APPLICANT'S SIGNATURE X Virginia Fanelli

I HEREBY CERTIFY THAT I AM THE OWNER OF RECORD OF THE PROPERTY DESCRIBED ABOVE AND, FURTHER THAT I APPROVE OF THE PROPOSED USE CONTAINED HEREIN. SEE NOTE 2.

OWNER'S SIGNATURE X Anthony Poligono

REMARKS

bill applicant contact person

THIS IS YOUR RECEIPT WHEN MACHINE VALIDATED

PAID - OCT. 8, 2002 \$200.00 CA

NOTE 1: FEES ARE NOT REFUNDABLE AND PAYMENT IN NO WAY GUARANTEES APPROVAL OF APPLICATION.

NOTE 2: THE OWNER IS RESPONSIBLE FOR PAYING ALL TIME AND MATERIAL CHARGES.

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

me
9/12/03

RESOLUTION APPROVING USE PERMIT APPLICATION
NO.2002-0577 FOR 24-HOUR OPERATION OF THE DRIVE-
THROUGH WINDOW FOR A PERIOD OF ONE YEAR AT
THE JACK-IN-THE-BOX LOCATED AT 1075 WEST
TENNYSON ROAD AND APPROVING ADDITIONAL
CONDITIONS OF APPROVAL

WHEREAS, Use Permit Application No. 2002-0577, concerns a request by Jack-in-the-Box Restaurant, Operator/Applicant, to amend Use Permit 80-109, to allow 24-hour operation of the drive-through window at the Jack-in-the-Box restaurant located at 1075 West Tennyson Road, located approximately 150 feet east of Tampa Avenue; and

WHEREAS, the City Council of the City of Hayward conditionally approved the Jack-in-the-Box restaurant in 1980, limiting the hours of operation from 6 a.m. to 12 midnight Sunday through Thursday and 6 a.m. to 2 a.m. Friday and Saturday; and

WHEREAS, the Planning Commission denied the application for the expanded hours and approved additional conditions of approval for Use Permit 80-109, which actions the Applicant has appealed; and

WHEREAS, the City Council of the City of Hayward hereby finds and determines as follows:

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5(a), Minor Alteration in Land Use Limitations.
2. The proposed 24-hour drive-up window is desirable for public convenience or welfare in that it provides late night food service opportunities for residents and commuters.
3. The proposed 24-hour drive-up window will not impair the character and integrity of the neighborhood in that Applicant will be required to take whatever steps are necessary to ensure the orderly conduct of employees, patrons and visitors to the premises to the satisfaction of the Planning Director and the Hayward Police Chief, which may include the hiring of security guards; shall post signs requesting that patrons reduce the volume of their car stereos; and

shall close the parking area to the public after midnight daily.

4. The proposed 24-hour drive-up window will not be detrimental to the safety and welfare in the neighborhood in that the expanded hours of operation are being approved for a one-year period only. If, during this period, these hours result in an atmosphere supportive of criminal activity as determined by the Hayward Police Chief, the hours shall revert back to those approved by the City Council in 1980.
5. The proposed condition of approval requiring the daily collection of litter within 300 feet of the perimeter of the site is consistent with the strategy of the Harder-Tennyson Neighborhood Plan requiring the daily pick-up of litter surrounding fast food restaurants.
6. The proposed condition of approval assuring the orderly conduct of employees, patrons, and visitors on the premises, is consistent with the policy of the Harder-Tennyson Neighborhood Plan to increase public safety.
7. The proposed condition of approval requiring the posting of signs requesting patrons to reduce the volume of their car stereos will help ensure the public welfare by striving to maintain acceptable living conditions for residents within the apartment units that are adjacent to the restaurant.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that, based upon the aforementioned findings, Use Permit Application No. 2002-0577, regarding a request to operate a 24-hour drive-through window is hereby approved for a period of one year and the conditions of approval set forth in Exhibit "A" attached hereto are hereby added to the existing conditions of approval for Use Permit 80-109.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward